## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

CELENA TRUJILLO	)
Claimant	)
VS.	)
	) Docket No. 256,92
WAL-MART	)
Respondent	)
AND	)
	)
CLAIMS MANAGEMENT, INC.	)
Insurance Carrier	)

## ORDER

Respondent and its insurance carrier appealed the terminal dates orally set by Administrative Law Judge Pamela J. Fuller at a hearing held on May 7, 2001.

## Issues

On May 7, 2001, Judge Fuller set the parties' terminal dates for presenting evidence in this claim. Respondent and its insurance carrier contend the Judge exceeded her jurisdiction by scheduling their terminal date to expire before claimant's. Therefore, they request the Board to either vacate the terminal dates set by the Judge or remand the claim to the Judge with instructions to schedule new terminal dates.

The only issues before the Board on this appeal are:

- 1. Does the Board have jurisdiction to address the order for terminal dates at this juncture of the claim?
- 2. If so, did the Judge err by scheduling respondent and its insurance carrier's terminal date to expire before claimant's?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the May 7, 2001 hearing transcript and considering respondent and its insurance carrier's arguments, the Board concludes that this appeal should be dismissed.

First, an order for terminal dates is an interlocutory order entered by an administrative law judge that may be modified by the judge before the final award. It is neither a preliminary hearing finding, nor a final order or final award, that is subject to review by the Board before the final award. The Board concludes it does not have jurisdiction at this stage of the claim to review the Judge's interlocutory order regarding the parties' terminal dates.

Second, the Board generally does not review issues that were not presented to the administrative law judge. The Workers Compensation Act provides:

. . . The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.<sup>2</sup> (Emphasis added.)

Respondent and its insurance carrier did not object to their terminal date at the May 7, 2001 hearing. Conversely, respondent and its insurance carrier's counsel agreed with the dates set by the Judge. The hearing transcript reads:

THE COURT: Why don't I pick a date. If that doesn't work, then maybe the parties can stipulate to an extension of terminal dates. But instead of setting it for June 7th, why don't I set it for June 21st, if no one has any objection.

MR. KING [respondent and its insurance carrier's counsel]: June 21st for whom?

THE COURT: For you.

MR. KING: Okay.

THE COURT: And it would be July 23rd -- I do not set it on a weekend -- for Mr. Levy.

MR. LEVY [claimant's counsel]: Okay.

THE COURT: And obviously, if you can't agree to an extension of terminal date[s], if that becomes an issue, you can always file a motion prior to your terminal date.

<sup>&</sup>lt;sup>1</sup> See K.S.A. 44-534a and K.S.A. 44-551.

<sup>&</sup>lt;sup>2</sup> K.S.A. 44-555c.

MR. KING: I think that will be fine for us, Your Honor. . . . <sup>3</sup>

WHEREFORE the Board dismisses this anneal

Later in the hearing, the Judge asked the parties' attorneys if there were any additional issues. And respondent and its insurance carrier's counsel said there were none. The Board concludes the terminal date issue was not presented to the Judge for consideration. That issue may not be raised for the first time on this appeal.

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IT IS SO ORDERED.	
Dated this day of August 2001.	
BOARD MEMBER	-
BOARD MEMBER	
BOARD MEMBER	
BOARD MEMBER	

c: Robert Levy, Garden City, KS
Janell Jenkins Foster, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director

<sup>&</sup>lt;sup>3</sup> Transcript of Proceedings, May 7, 2001; pp. 4, 5.